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7 ESTATE OF CHARLES CHIVRELL, et al.,
8 Plaintiffs,
9 v.
10 CITY OF ARCATA, et al.,
11 Defendants.

Case No. 22-cv-00019-HSG

ORDER RE: MOTION TO DISMISS

Re: Dkt. No. 61

12 In their pending motion to dismiss, City Defendants move to dismiss Plaintiffs' Sixth
13 Cause of Action for Excessive Force under the California constitution. Dkt. No. 61 at 8. In their
14 reply brief, City Defendants argued, for the first time, that Plaintiffs' Article 1, § 13 excessive
15 force claim should be dismissed because the California constitution does not provide a direct cause
16 of action for damages for violation of due process life, liberty, or property interests. Dkt. No. 67
17 at 7. While this appears to the Court to be an accurate statement of the law, Plaintiffs have not had
18 an opportunity to respond to this argument because it was not raised until reply. Accordingly,
19 Plaintiffs' counsel is DIRECTED to file a response of no more than two pages addressing only the
20 narrow issue raised by Defendants, namely whether there is any legal support for the existence of
21 a private cause of action for damages under this provision of the California constitution. The
22 response should preferably cite Ninth Circuit or California state court cases (if there are any)
23 before relying on district court decisions. Any response is due no later than September 26, 2023,
24 at 5:00 PM.

25 **IT IS SO ORDERED.**

26 Dated: 9/21/2023

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HAYWOOD S. GILLIAM, JR.
United States District Judge